

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE: PHENYLPROPANOLAMINE  
(PPA) PRODUCTS LIABILITY  
LITIGATION

MDL NO. 1407

ORDER DENYING MOTION TO  
DISMISS

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This document relates to:

Eddie Bullock v. Bayer  
Corporation, et al., No. 3-cv-  
2585.

Harold Wheeler, M.D. and Walter Moses, M.D., two of the named defendants in the above-referenced matter, move this court to dismiss without prejudice plaintiff's complaint against them pursuant to Case Management Order 15 ("CMO 15") and Fed.R.Civ.P. 12(b)(5).

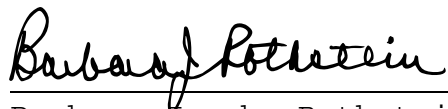
This case arose out of a multi-plaintiff suit filed in the Circuit Court of Humphreys County, Mississippi by Eddie Bullock and twelve other individuals against Bayer Corporation, Dr. Wheeler, and Dr. Moses. The case was then removed to the United States District Court for the Northern District of Mississippi and subsequently transferred to this court. On May 29, 2003, the court entered CMO 15 and ruled that multiple-plaintiff cases did not meet the threshold standard for permissive joinder under Fed.R.Civ.P. 20(a). Plaintiffs in any multiple-plaintiff case

1 pending in MDL 1407 as of May 29, 2003, were ordered to file and  
2 serve individual, severed complaints within 30 days of the order.  
3 Plaintiff filed an amended/severed complaint on August 18, 2003.  
4 Dr. Wheeler and Dr. Moses claim that they were never served with  
5 plaintiff's individual complaint.

6 In response, plaintiff presents the court with a copy of the  
7 certificate of service that was included with the individual  
8 complaint. In it Kenneth Smith of Miller & Associates, co-counsel  
9 for plaintiff, certified that he caused a copy of the individual  
10 complaint to be mailed to counsel for *all* defendants on August  
11 18, 2003. In addition, Drs. Wheeler and Moses have failed to  
12 establish that they have been prejudiced by plaintiff's alleged  
13 failure to serve them. Moreover, if the doctors indeed had been  
14 prejudiced, they would be equally culpable with plaintiff, if not  
15 more so, for waiting nearly eighteen months before bring this  
16 motion.

17 Based on the foregoing, the court hereby DENIES the motion  
18 to dismiss.

19 DATED this 5<sup>th</sup> day of July, 2005.  
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23 Barbara Jacobs Rothstein  
24 U.S. District Court Judge  
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